IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAMELA THOMPSON	:	CIVIL ACTION
	:	
v.	:	
	:	
TARGET STORES, INC.	:	NO. 00-CV-830

MEMORANDUM

Padova, J. **November , 2000**

Plaintiff Pamela Thompson brings this action against Defendant Target Stores, Incorporated, seeking recovery for damages sustained when she slipped and fell in one of Defendant's stores. Before the Court is Defendant's Motion for Summary Judgment. The matter has been fully briefed and is ripe for decision. For the following reasons, the Court denies Defendant's Motion.

I. BACKGROUND

The following facts are essentially undisputed for the purposes of the instant Motion. On May 28, 1998, Pamela Thompson ("Thompson") was shopping in Defendant's store located in Colonial Heights, Virginia ("Store"). At some point, Thompson entered the store's public restroom to find most of the floor covered with a large amount of water and solid waste ("Mess"). She stepped around the Mess to enter a toilet stall. Upon exiting the stall, Thompson again walked around the Mess to use the sink. While attempting to step around the Mess for a third time, Thompson slipped and fell in a puddle of seeping clear water ("Puddle") that she had not previously noticed.

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, "the adverse party's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255. "[I]f the opponent [of summary judgment] has exceeded the 'mere scintilla' [of evidence] threshold and has offered a genuine issue of material fact, then the court cannot credit the movant's version of events against the opponent, even if the quantity of the movant's evidence far outweighs that of its opponent. Big Apple BMW, Inc. v. BMW of North

America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

III. DISCUSSION

The Complaint contains one count alleging that Defendant was negligent with respect to maintenance of the Store's restroom. The parties agree that Virginia law applies to this case. Virginia law places bears the burden of proving that the defendant was negligent and that such negligence was the proximate cause of the injury on the plaintiff. Great Atlantic and Pacific Tea Co., Inc. v. Berry, 128 S.E.2d 311, 313 (Va. 1962). Defendant argues that Plaintiff lacks sufficient evidence to establish a prima facie case of negligence.

Under Virginia law, store owners owe their customers a duty to exercise ordinary care:

> In carrying out this duty it was required to have the premises in a reasonably safe condition for [the customer's] visit; to remove, within a reasonable time, foreign objects from the floors which it may have placed there, or of which it knew or should have known that other persons had placed there; to warn [the customer] of the unsafe condition if it was unknown to [the customer], but was or should have been, known to [the store owner].

Winn-Dixie Stores, Inc. v. Parker, 396 S.E.2d 649, 650 (Va. 1990) (quoting Colonial Stores v. Pulley, 125 S.E.2d 188, 190 (Va. 1962)). Given the facts and circumstances that the defendant knew or should have known, if an ordinarily prudent person could have foreseen the risk of danger resulting from such circumstances, the defendant had a duty to exercise reasonable care to "avoid the genesis of the danger." Memco Stores, Inc. v. Yeatman, 348 S.E.2d 228, 231 (Va. 1986).

An essential element of a negligence claim is notice, whether actual or constructive, of the hazard to the defendant. See Colonial Stores, 125 S.E.2d at 90. A plaintiff may prove actual notice by demonstrating that the hazardous condition was affirmatively created by the defendant or that the defendant actually knew about the condition. Ashby v. Faison & Assoc., Inc., 440 S.E.2d 603, 605

(Va. 1994); Colonial Stores, 125 S.E.2d at 190. Plaintiff fails to adduce evidence indicating that Defendant actually knew about the condition or created the condition. See Def. Ex. A at 28-29; Def. Ex. G.

In the absence of proof of actual notice, the plaintiff may prevail by proving that the defendant had constructive notice of the hazardous condition in time to remove it. Memco, 348 S.E.2d at 231. Constructive notice requires proof that the condition had been present long enough that the defendant should have known of its presence. Id.; see also Winn-Dixie, 396 S.E.2d at 651. Accordingly, the plaintiff must present evidence showing how long the condition had been on the floor and how it got there. Berry, 128 S.E.2d at 313-14. Considering the evidence submitted by the parties and taking all reasonable inferences therefrom in Plaintiff's favor, the Court determines that a genuine issue of material fact exists as to constructive notice, including how long the Mess and Puddle had been on the floor and how the conditions arose. See Def. Ex. G at 2; Pl. Ex. A at 23-24, 26; Def. Ex. E ¶ 3. Furthermore, even if no genuine issue of material fact existed as to the length of time the Mess and Puddle were present, the determination of whether Defendant behaved negligently by leaving the hazards for an unreasonable time is a question most appropriately resolved by the factfinder. See Phillips v. Southeast 4-H Educ. Ctr., Inc., 510 S.E.2d 458, 460 (Va. 1999). The Court, therefore, denies Defendant's Motion. An appropriate Order follows.